

ESTTA Tracking number: **ESTTA498930**

Filing date: **10/09/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	August Storck KG
Granted to Date of previous extension	10/20/2012
Address	Waldstrasse 27 Berlin, 13403 GERMANY

Domestic Representative	Joseph F. Schmidt Shefsky & Froelich Ltd. 111 E. Wacker Dr., Ste. 2800 Chicago, IL 60601 UNITED STATES ipdocket@shefskylaw.com, jschmidt@shefskylaw.com Phone: 312-836-4178
-------------------------	--

### Applicant Information

Application No	85584002	Publication date	08/21/2012
Opposition Filing Date	10/09/2012	Opposition Period Ends	10/20/2012
Applicants	<p>MCGOWAN CRAIN, LLC 5257 SHAW AVE., SUITE 201 ST. LOUIS, MO 63110 UNITED STATES</p> <p>MANTRA LLC 4314 MARINA CITY DRIVE, SUITE 322 MARINA DEL REY, CA 90292 UNITED STATES</p> <p>PROWOOD WINE &amp; SPIRITS INC. 4062 VERDUGO RD. LOS ANGELES, CA 90065 UNITED STATES</p>		


### Goods/Services Affected by Opposition

Class 033. All goods and services in the class are opposed, namely: spirits and liqueurs
---

### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

## Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	2064487	Application Date	08/22/1995
Registration Date	05/27/1997	Foreign Priority Date	NONE
Word Mark	MAMBA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1985/05/00 First Use In Commerce: 1985/05/00 candy fruit chews		

Attachments	74718986#TMSN.gif ( 1 page )( bytes ) Mamba - Notice of Opposition.pdf ( 4 pages )(15081 bytes )
-------------	---

## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Joseph F. Schmidt/
Name	Joseph F. Schmidt
Date	10/09/2012

**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD  
IN THE US PATENT AND TRADEMARK OFFICE**

AUGUST STORCK KG,

*Opposer,*

v.

McGOWAN CRAIN, LLC,  
MANTRA, LLC, and  
PROWOOD WINE & SPIRITS, INC.

*Applicant.*

Opposition No.

**NOTICE OF OPPOSITION**

TO: Assistant Commissioner of Trademarks

Dear Sir:

In the matter of the application for registration of the alleged mark MAMBA for "spirits and liqueurs" in International Class 33, Serial No. 85/584,002, filed on March 29, 2012, by McGowan Crain, LLC, Mantra, LLC, and Prowood Wine & Spirits, Inc. (hereinafter "applicant"), and published on page TM 934 of the August 21, 2012 edition of the Official Gazette of the United States Patent and Trademark Office, August Storck KG (hereinafter "opposer"), a partnership organized and existing under the laws of Germany, located and doing business at Waldstrasse 27, 13403 Berlin, believes that it will be damaged by the registration of the mark shown in the application and, therefore, opposes the same. The grounds for this opposition are as follows:

1. Opposer has been engaged for many years in the business of manufacturing and distributing, throughout the U.S. and elsewhere throughout the world, confectionery products.
2. Long prior to March 29, 2012, the filing date of the above intent to use application for the mark MAMBA, opposer adopted and, since at least 1985, has used in

interstate commerce the mark MAMBA in connection with "candy fruit chews", and opposer has continuously used, and is now using the mark MAMBA in connection with such goods in commerce.

3. Opposer is the owner of U.S. Registration No. 2,064,487, dated May 27, 1997, for the mark MAMBA, and opposer has complied with the provisions of Section 15 of the Trademark Act, 15 U.S.C. § 1065, and the mark MAMBA has become incontestable thereunder.

4. As a result of opposer's use of the mark MAMBA, the mark has become widely and favorably known throughout the United States, and has become recognized by the trade and public as identifying opposer's goods and distinguishing them from the goods of others and opposer has established an exceedingly valuable goodwill in the mark.

5. The mark MAMBA sought to be registered by applicant is identical to opposer's mark MAMBA. Applicant seeks to register the mark MAMBA for goods related to those goods in connection with which the opposer uses its mark.

6. Opposer believes that applicant's alleged mark MAMBA, when applied to the goods of applicant, so resembles opposer's mark MAMBA as to be likely to cause confusion, or to cause mistake, or to deceive, and that opposer will be damaged by registration of applicant's mark within the meaning of Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).

7. As a result of opposer's extensive use and advertising of its mark MAMBA in connection with its goods throughout the United States, opposer's mark is widely recognized by the general consuming public of the United States as a designation of source of opposer's goods. Opposer's mark is distinctive, either inherently or through acquired distinctiveness, and famous for opposer's goods. Opposer's mark MAMBA became famous long before any use of the mark MAMBA by applicant.

8. Applicant's alleged mark MAMBA, when applied to the goods of applicant, is likely to cause dilution by blurring or dilution by tarnishment of the distinctive quality of opposer's famous mark MAMBA within the meaning of Section 43(c) of the Trademark Act, 15 U.S.C. § 1125(c).

WHEREFORE, opposer prays that this opposition be sustained and that registration of applicant's mark be refused.

Dated: October 9, 2012

/s/ Joseph F. Schmidt

Joseph F. Schmidt  
SHEFSKY & FROELICH LTD.  
111 East Wacker Drive  
Suite 2800  
Chicago, IL 60601  
Telephone: 312-836-4178

Attorney for Opposer August Storck KG

1222846\_1

**CERTIFICATE OF SERVICE**

I hereby certify that on October 9, 2012, a true copy of the foregoing Notice of Opposition was served on applicant's attorney of record via email and the United States Postal service, first class mail, postage prepaid as follows:

Andrea F. Sellers  
Stinson Morrison Hecker LLP  
1201 Walnut St., Ste. 2900  
Kansas City, MO 64106-2178  
trademark@stinson.com  
asellers@stinson.com

/s/ Joseph F. Schmidt  
Attorney for Applicant